Nos. 15-233 & 15-255

IN THE
Supreme Court of the United States

COMMONWEALTH OF PUERTO RICO, ET AL.,
Petitioners,

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.
Respondents.

MELBA ACOSTA-FEBO, ET AL.,
Petitioners,

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, ET AL.
Respondents.

On Petitions For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION FOR RESPONDENT BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC

DAVID C. INDIANO
JEFFREY M. WILLIAMS
LETICIA CASALDUC-RABELL
INDIANO & WILLIAMS, PSC
207 Del Parquet St., 3d Floor
San Juan, P.R. 00912
(787) 641-4545

THEODORE B. OLSON
MATTHEW D. MCGILL
Counsel of Record
LINDSAY S. SEE
RUSSELL BALIKIAN
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
mmcgill@gibsondunn.com

MATTHEW J. WILLIAMS
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, N.Y. 10166
(212) 351-2322

Counsel for Respondent BlueMountain Capital Management, LLC

QUESTION PRESENTED

For nearly 70 years, the Bankruptcy Code has expressly prohibited State laws that prescribe municipal-debt-restructuring laws that bind nonconsenting creditors. *See* 11 U.S.C. § 903(1). In 2014, Puerto Rico—which is a "State" under that provision, *see id.* § 101(52)—enacted the Public Corporation Debt Enforcement and Recovery Act, which creates a Puerto Rico-specific municipal-bankruptcy regime that binds creditors of Puerto Rico's municipalities to debt-restructuring plans without the creditors' consent. Is the Recovery Act preempted by federal law?

RULE 29.6 STATEMENT

BlueMountain Capital Management, LLC is a limited liability company organized under the laws of Delaware. It has no parent corporation. Affiliated Managers Group, Inc., a public corporation, indirectly owns a non-controlling revenue share of BlueMountain.

TABLE OF CONTENTS

Page

OPINIONS BELOW 1

JURISDICTION 1

STATEMENT 1

REASONS FOR DENYING THE PETITION 10

I. THE PETITIONS DO NOT MEET THIS COURT'S CERTIORARI CRITERIA 11

II. THE FIRST CIRCUIT CORRECTLY APPLIED SETTLED LAW IN HOLDING THAT THE BANKRUPTCY CODE PREEMPTS THE RECOVERY ACT 17

A. Section 903(1) Preempts The Recovery Act 17

B. The Recovery Act Is Also Preempted Because It Frustrates Congress's Objectives And Trespasses On A Field That Congress Has Occupied 29

CONCLUSION 34

TABLE OF AUTHORITIES

Page(s)

CASES

Arizona v. *United States*,
132 S. Ct. 2492 (2012) 31, 32

Ashton v. *Cameron Cnty. Water Improvement Dist. No. One*,
298 U.S. 513 (1936) 4

City of Pontiac Retired Emps. Ass'n v. *Schimmel*,
751 F.3d 427 (6th Cir. 2014) 22, 23

Cohen v. *de la Cruz*,
523 U.S. 213 (1998) 19

Cont'l Ill. Nat'l Bank & Trust Co. v. *Chi., Rock Island & Pac. Ry.*,
294 U.S. 648 (1935) 3

Crosby v. *Nat'l Foreign Trade Council*,
530 U.S. 363 (2000) 29

Faitoute Iron & Steel Co. v. *City of Asbury Park*,
316 U.S. 502 (1942) 6, 18, 23, 25, 32

Int'l Shoe Co. v. *Pinkus*,
278 U.S. 261 (1929) 3, 4, 31, 32

Lawson v. *Suwannee Fruit & S.S. Co.*,
336 U.S. 198 (1949) 26

Magnum Import Co. v. *Coty*,
262 U.S. 159 (1923) 11

TABLE OF AUTHORITIES
(continued)

Page(s)

MSR Expl., Ltd. v. *Meridian Oil, Inc.*,
74 F.3d 910 (9th Cir. 1996) 31

Philko Aviation, Inc. v. *Shacket*,
462 U.S. 406 (1983) 26

Puerto Rico v. *Sánchez Valle*,
No. 15-108 (Sept. 8, 2015) 33

Republic of Iraq v. *Beaty*,
556 U.S. 848 (2009) 22

Rice v. *Santa Fe Elevator Corp.*,
331 U.S. 218 (1947) 28, 31

Ry. Labor Execs.' Ass'n v. *Gibbons*,
455 U.S. 457 (1982) 4, 16, 28

Sherwood Partners, Inc. v. *Lycos, Inc.*,
394 F.3d 1198 (9th Cir. 2005) 31

Sturges v. *Crowninshield*,
17 U.S. (4 Wheat.) 122 (1819) 4

U.S. Trust Co. of N.Y. v. *New Jersey*,
431 U.S. 1 (1977) 17

UAW v. *Fortuño*,
633 F.3d 37 (1st Cir. 2011) 4

United States v. *Bekins*,
304 U.S. 27 (1938) 3, 6, 29

United States v. *Locke*,
529 U.S. 89 (2000) 28

Wos v. *E.M.A. ex rel. Johnson*,
133 S. Ct. 1391 (2013) 29

TABLE OF AUTHORITIES
(continued)

Page(s)

CONSTITUTIONAL PROVISIONS

U.S. Const. art. I, § 10, cl. 1 3
U.S. Const. art. I, § 8, cl. 4 3

STATUTES

11 U.S.C., ch. 9 32
11 U.S.C. § 101(10) 25
11 U.S.C. § 101(13) 25
11 U.S.C. § 101(40) 4
11 U.S.C. § 101(52) ..... *passim*
11 U.S.C. § 109(c) ..... *passim*
11 U.S.C. § 903 ..... 20, 21, 22, 27
11 U.S.C. § 903(1) ..... *passim*
28 U.S.C. § 1254(1) 1
Act of June 25, 1910, Pub. L. No. 61-294, 36 Stat. 838:
sec. 4 30
Act of Aug. 16, 1937, Pub. L. No. 75-302, 50 Stat. 653:
§ 81 5
§ 82 5
§ 83(a) 5
50 Stat. 653 4

TABLE OF AUTHORITIES
(continued)

Page(s)

Act of June 22, 1938, Pub. L. No. 75-696, 52 Stat. 840:
sec. 1, § 1(29) 6, 18

Act of July 1, 1946, Pub. L. No. 79-481, 60 Stat. 409:
sec. 1, § 83(i) ..... *passim*

Bankruptcy Act of 1898, ch. 541, 30 Stat. 544:
§ 1(24) 5, 21

Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333:
sec. 421(j) 5

Puerto Rico Public Corporation Debt Enforcement and Recovery Act, P.R. Law No. 71-2014:
§ 102(50) 13
§ 113 13
Statement of Motives § A 7
Statement of Motives § E 7, 32

LEGISLATIVE MATERIALS

H.R. 870, 114th Cong. (2015) 16

H.R. Rep. No. 79-2246 (1946) 18, 23, 26

S. 1774, 114th Cong. (2015) 16

S. Rep. No. 95-989 (1978) 7, 18, 23, 26

TABLE OF AUTHORITIES
(continued)

Page(s)

RULE

S. Ct. R. 10(c) 12

OTHER AUTHORITIES

Black's Law Dictionary (10th ed. 2014) 6

Nick Brown & Megan Davies, *Puerto Rico Says Water Authority Not at Risk; Investors Wary*, Reuters (Aug. 24, 2015). 14

Mike Chenery, *Puerto Rico's Power Authority Reaches Deal with Bondholders*, Wall St. J. (Sept. 2, 2015) 10, 15

Stephen J. Lubben, *Puerto Rico and the Bankruptcy Clause*, 88 Am. Bankr. L.J. 553 (2014) 25

Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425 (1993) 6, 28, 29

Mary Williams Walsh, *Puerto Rico Turmoil Sinks Sewer Bond*, N.Y. Times, Aug. 25, 2015 14

TABLE OF AUTHORITIES
(continued)

Page(s)

Mary Williams Walsh, *Senate Panel Is Chilly to Puerto Rico's Pleas and Obama's Aid Plan*, N.Y. Times, Oct. 22, 2015 16

BRIEF IN OPPOSITION

Respondent BlueMountain Capital Management, LLC respectfully submits that the petition for a writ of certiorari in No. 15-233 ("Commonwealth-Pet.") and the petition for a writ of certiorari in No. 15-255 ("GDB-Pet.") should be denied.

OPINIONS BELOW

The opinion of the court of appeals (Commonwealth-Pet. App. 1a-68a) has not yet been published in the Federal Reporter, but is available at 2015 WL 4079422. The opinion of the district court (Commonwealth-Pet. App. 69a-137a) is reported at 85 F. Supp. 3d 577.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 2015. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT

Federal bankruptcy law has provided a comprehensive scheme for restructuring municipal debt since 1937. In 1946, in direct response to a 1942 decision of this Court holding that then-nascent federal municipal bankruptcy laws did not preempt a state law providing for the compulsory adjustment of municipal debts, Congress enacted a statute that expressly prohibits State laws providing for the adjustment of municipal debts over the objection of nonconsenting creditors. That provision—now codified at Section 903(1) of the Bankruptcy Code—indisputably applied to Puerto Rico when it was enacted, and it is essentially unchanged today. For 68

years, the States, the District of Columbia, and Puerto Rico alike all observed this prohibition; none attempted to enact their own municipal bankruptcy law until Puerto Rico enacted its Recovery Act in 2014. The U.S. District Court for the District of Puerto Rico held that the Recovery Act was preempted by federal law, and the First Circuit unanimously affirmed. Petitioners now claim the lower courts erred. That contention does not warrant this Court's review.

Petitioners readily acknowledge both that there is no circuit conflict on the question presented, and, moreover, that the question is unlikely to recur. They instead rest their case for review on the exigency of the Commonwealth's current fiscal crisis and the asserted urgent need of the Commonwealth's public utilities to restructure their debts. But if the public utilities' need to restructure their debts is what makes the question presented important, then the importance of the question is vanishing, indeed. The electric utility that was the *raison d'être* for the Recovery Act recently reached an agreement with respondents and other creditors to restructure its $9 billion debt. That amply demonstrates that the Commonwealth's public utilities do not need to resort to the Recovery Act's ersatz version of Chapter 9 in order to achieve debt sustainability, and it puts the lie to petitioners' alarmist policy arguments in favor of allowing Puerto Rico to place its municipalities into bankruptcy.

But even if the Commonwealth's municipalities' need for resort to bankruptcy were as great and as urgent as petitioners claim—and it is not—that would not change the fact that the decision below is

indisputably correct. The text of Section 903(1) is clear, and it prohibits state-law municipal bankruptcy regimes. That provision applied to Puerto Rico when it was enacted, and, because the provision is unchanged today, the conclusion that it applies to Puerto Rico today is inescapable. Even when the stakes are very high, review is not warranted when the decision below is so clearly correct. And it is even less so when, even if the Court granted petitioners the relief they seek, respondents could obtain the same injunction against the Recovery Act on their claim under the Contract Clause. The petitions should be denied.

1. The Bankruptcy Clause of the Constitution provides: "Congress shall have Power . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. That power "is unrestricted and paramount." *Int'l Shoe Co.* v. *Pinkus*, 278 U.S. 261, 265 (1929). It permits Congress to establish bankruptcy procedures for a State's political subdivisions and instrumentalities, *United States* v. *Bekins*, 304 U.S. 27, 50-51 (1938) (upholding municipal-debt-restructuring law), even if those procedures impair contractual obligations, *see Cont'l Ill. Nat'l Bank & Trust Co.* v. *Chi., Rock Island & Pac. Ry.*, 294 U.S. 648, 680-81 (1935) (contract impairment "necessarily results from the nature of the [bankruptcy] power").

The States, by contrast, possess only limited power over bankruptcy. The Contract Clause of the U.S. Constitution prohibits States from "pass[ing] any . . . Law impairing the Obligation of Contracts," U.S. Const. art. I, § 10, cl. 1, which includes state

bankruptcy laws, *Sturges* v. *Crowninshield*, 17 U.S. (4 Wheat.) 122, 200 (1819) (prohibition "includes insolvent laws"); *see also Ry. Labor Execs.' Ass'n* v. *Gibbons*, 455 U.S. 457, 472 n.14 (1982) ("Apart from and independently of the Supremacy Clause, the Contract Clause prohibits the States from enacting debtor relief laws which discharge the debtor from his obligations, unless the law operates prospectively." (citation omitted)); *UAW* v. *Fortuño*, 633 F.3d 37, 41 n.3 (1st Cir. 2011) (applying Contract Clause to Puerto Rico). A State lacks authority, for example, to enact binding municipal-bankruptcy laws that substantially impair contractual obligations. *See, e.g.*, *Ashton* v. *Cameron Cnty. Water Improvement Dist. No. One*, 298 U.S. 513, 531 (1936) ("This [a State] may not do under the form of a bankruptcy act or otherwise.").

Where Congress has exercised its power under the Bankruptcy Code, States are more limited still. "States may not . . . pass or enforce laws to interfere with *or complement* the Bankruptcy Act or to provide *additional or auxiliary regulations*" on bankruptcy matters. *Pinkus*, 278 U.S. at 265 (emphases added).

2. Congress has provided a comprehensive debt-restructuring mechanism for municipalities since the 1930s. Act of Aug. 16, 1937, Pub. L. No. 75-302, 50 Stat. 653; *see also* 11 U.S.C. § 101(40) (term "municipality" includes the "public agenc[ies] or instrumentalit[ies] of a State"). Today, these provisions are housed in Chapter 9 of the Bankruptcy Code. *See* 11 U.S.C. §§ 901 *et seq.*

Not all municipalities are eligible for Chapter 9. As relevant here, a municipality "may be a debtor under chapter 9" only if it is "specifically author-

ized . . . to be a debtor under [Chapter 9] by State law." 11 U.S.C. § 109(c)(2). About half of the States withhold that authorization and thereby bar their municipalities from invoking Chapter 9. *See* Commonwealth-Pet. App. 104a & n.16.

Since 1984, Congress similarly has withheld Chapter 9 authorization from the municipalities of the District of Columbia and Puerto Rico. Congress initially had made municipal bankruptcy relief available to any "city, town, village, . . . or other municipality," subject only to the control of the parent "Stat[e]"—a term that included "Territories" and "the District of Columbia." Act of Aug. 16, 1937, §§ 81-82, 83(a), 50 Stat. at 654-55, 659; Bankruptcy Act of 1898, ch. 541, § 1(24), 30 Stat. 544, 545. But in 1984 Congress re-defined "State" to "includ[e] the District of Columbia and Puerto Rico, *except for the purpose of defining who may be a debtor under chapter 9 of this title*," Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, sec. 421(j)(6), 98 Stat. 333, 369 (codified as renumbered at 11 U.S.C. § 101(52)) (emphasis added). Because, under Chapter 9, a municipality can enter bankruptcy only after obtaining the necessary authorization under "State law," 11 U.S.C. § 109(c)(2), the 1984 redefinition of "State" precludes municipalities in the District of Columbia and Puerto Rico from being Chapter 9 debtors.

Further, since 1946 Congress has expressly barred States, territories, and other U.S. possessions from enacting their own municipal-bankruptcy regimes. *See* Act of July 1, 1946, Pub. L. No. 79-481, sec. 1, § 83(i), 60 Stat. 409, 415 ("Section 83(i)"). That prohibition is now codified as Section 903(1) of

the Bankruptcy Code, which provides: "[A] State law prescribing a method of composition of indebtedness of [a] municipality may not bind any creditor that does not consent to such composition." 11 U.S.C. § 903(1).[1]

The impetus for this express preemption provision was this Court's decision in *Faitoute Iron & Steel Co.* v. *City of Asbury Park*, 316 U.S. 502, 505-06 & n.1 (1942). Previously, it had been assumed that the Contract Clause prohibited States from enacting debt-restructuring laws. *See, e.g.*, *Bekins*, 304 U.S. at 51; Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 426-28 (1993). *Faitoute*, however, held that the New Jersey municipal-debt-restructuring law at issue did not violate the Contract Clause—and that then-applicable federal bankruptcy law did not preempt it either. *See* 316 U.S. at 508-09.

Congress responded by enacting Section 83(i) to bar States from enacting nonconsensual restructuring laws for their municipalities: "[N]o State law prescribing a method of composition of indebtedness of [State] agencies shall be binding upon any creditor who does not consent to such composition." Act of July 1, 1946, sec. 1, § 83(i), 60 Stat. at 415. This prohibition applied to Puerto Rico from the outset because the term "States" included "Territories and possessions." *See* Act of June 22, 1938, Pub. L. No.

---

[1] A "composition" is an "agreement between a debtor and two or more creditors for the adjustment or discharge of an obligation for some lesser amount." *Black's Law Dictionary* 346 (10th ed. 2014).

75-696, sec. 1, § 1(29), 52 Stat. 840, 842. Congress incorporated Section 83(i)'s prohibition into the modern Bankruptcy Code "with stylistic changes" only, and thus the provision, re-codified as Section 903(1), continued to prevent "States [from] enact[ing] their own versions of" Chapter 9 and thereby "frustrat[ing] the constitutional mandate of uniform bankruptcy laws." S. Rep. No. 95-989, at 110 (1978) (internal quotation marks omitted). Section 903(1) remains unchanged today, and by the Bankruptcy Code's plain terms, Puerto Rico remains a "State" for purposes of Section 903(1)'s bar. *See* 11 U.S.C. § 101(52) (Puerto Rico is a State in the Bankruptcy Code "except for the purpose of defining who may be a debtor under chapter 9").

3. In 2014, the Commonwealth enacted the Puerto Rico Public Corporation Debt Enforcement and Recovery Act, P.R. Law No. 71-2014 ("Recovery Act"), *see* Commonwealth-Pet. App. 138a-271a. The Recovery Act was enacted primarily to target the $9 billion debt of the Commonwealth's publicly owned electric utility, PREPA. *See* Recovery Act, Statement of Motives § A (Commonwealth-Pet. App. 145a) ("Public corporations of the Commonwealth of Puerto Rico that provide essential public services, PREPA being the most dramatic example, today face significant operational, fiscal, and financial challenges."). The Act purports to create a binding debt-restructuring scheme for the Commonwealth's public entities. *See id.* § E (Commonwealth-Pet. App. 155a). Indeed, the Recovery Act touts that it is "designed in many respects to mirror certain key provisions of [the Bankruptcy Code]," and describes the Act's Chapter 3 as "model[ed]" on Chapter 9. *Ibid.* (Commonwealth-Pet. App. 155a, 160a).

BlueMountain and funds that it manages hold more than $400 million of bonds issued by PREPA. *See* Commonwealth-Pet. App. 76a, 132a. In the trust agreement governing the bonds, PREPA agreed that bondholders could sue to enforce the terms of the trust agreement, or seek appointment of a receiver. Commonwealth-Pet. App. 85a-86a.

BlueMountain filed this lawsuit shortly after the Recovery Act was enacted. As relevant here, BlueMountain argued that the Recovery Act is preempted by the Bankruptcy Code and violates the Contract Clause. *See* Commonwealth-Pet. App. 76a-77a. A group of investment funds, led by Franklin California Tax-Free Trust, also filed a lawsuit challenging the constitutionality of the Act on similar grounds. *See* Commonwealth-Pet. App. 74a-76a. The district court consolidated these suits and the defendants moved to dismiss; the Franklin plaintiffs cross-moved for summary judgment. *See* Commonwealth-Pet. App. 77a-78a.

4. In February 2015, the district court held that the Bankruptcy Code preempts the Recovery Act. *See* Commonwealth-Pet. App. 111a. Having concluded that the Recovery Act was "void pursuant to the Supremacy Clause of the United States Constitution," the district court "enjoined" "[t]he Commonwealth defendants, and their successors in office," "from enforcing the Recovery Act," Commonwealth-Pet. App. 137a. And after reciting a litany of alternatives available to PREPA to deal with its debts—among them, collecting the money owed to it by the Commonwealth and its municipalities—the district court also denied petitioners' motion to dismiss respondents' claims under the Contract Clause.

Commonwealth-Pet. App. 126a-27a. Petitioners appealed.

5. The First Circuit unanimously affirmed. The court held that the Recovery Act falls squarely within the terms of 11 U.S.C. § 903(1), and that "[t]he context and history of this provision confirm" that it "was intended to have a preemptive effect." Commonwealth-Pet. App. 23a. As an independent basis for affirmance, the court also held that even if Section 903(1) itself did not preempt the Recovery Act, the Act would be invalid under principles of conflict preemption because it "frustrates Congress's undeniable purpose in enacting" that provision. Commonwealth-Pet. App. 42a. The court also emphasized that Congress remains free to adjust Puerto Rico municipalities' access to Chapter 9 or to provide Puerto Rico with other tools for addressing its debt crisis. *See* Commonwealth-Pet. App. 45a. Having affirmed the district court's injunction on preemption grounds, the court of appeals did not address petitioners' argument that the district court lacked jurisdiction to deny their motion to dismiss respondents' Contract Clause claims. *See* Commonwealth-Pet. App. 20a.

Judge Torruella concurred in the judgment, agreeing that Section 903(1) preempts the Recovery Act. He wrote separately to explain his view that the 1984 amendment to the Bankruptcy Code that barred Puerto Rico municipalities from accessing Chapter 9 relief is unconstitutional. Commonwealth-Pet. App. 47a. This argument, however, was not raised in the district court or court of appeals. *See* GDB-Pet. 11 ("the constitutionality of § 101(52) is not at issue in this litigation").

6. Petitioners requested review in this Court in August 2015. A few weeks later, following months of negotiation, PREPA and its creditors (including respondents) reached a voluntary agreement to restructure the bonds underlying both the Recovery Act and this litigation.[2]

REASONS FOR DENYING THE PETITION

The question presented does not warrant this Court's review. Petitioners admit that there is no "conflict among the lower courts." Commonwealth-Pet. 3. Similarly, they agree that the preemption question they press is unlikely ever to resurface. Commonwealth-Pet. 27-28. This Court generally does not grant certiorari to hunt for errors in lower-court opinions that thoroughly address one-off legal questions. And any cause for doing so here is much diminished now that—contrary to the Commonwealth's claims that the decision below leaves the Commonwealth's public corporations with no means to restructure their debts—the most indebted of its public corporations, PREPA, has reached a consensual agreement to restructure its debts. Indeed, even if this Court were to grant review, that could not rescue Puerto Rico's Recovery Act because that legislation plainly impairs existing contracts in violation of the Contract Clause.

---

[2] Mike Chenery, *Puerto Rico's Power Authority Reaches Deal with Bondholders*, Wall St. J. (Sept. 2, 2015), http://on.wsj.com/1j8g00D.

I. THE PETITIONS DO NOT MEET THIS COURT'S CERTIORARI CRITERIA.

Petitioners concede both that there is no conflict in the circuits on the narrow preemption question they raise and that it is unlikely ever to arise again outside the First Circuit. Those admissions deeply undermine any argument that this Court's review is needed. And petitioners' remaining argument—that the Commonwealth desperately needs access to a municipal-debt-restructuring mechanism to manage its public debt—is a policy argument properly directed to Congress. Even the policy argument fails, though, because recent events demonstrate that Puerto Rico's municipalities are able to restructure their debts without the aid of a bankruptcy regime. Even if that were not the case, in no event could the Recovery Act be revived because it transparently violates the Contract Clause.

A. The decisions below are the first and only federal decisions to address 11 U.S.C. § 903(1)'s application to either of the two jurisdictions—the District of Columbia and Puerto Rico—treated as a "State" by the Bankruptcy Code "except for the purpose of defining who may be a debtor under chapter 9." 11 U.S.C. § 101(52). Petitioners therefore concede, as they must, that there is no conflict among the lower courts on the question presented. *See* Commonwealth-Pet. 3 (referencing the "absence of a conflict among the lower courts"); GDB-Pet. 30 ("It is exceedingly unlikely that a Circuit split will ever develop."). Certiorari is accordingly unnecessary to "secure uniformity of decision." *Magnum Import Co.* v. *Coty*, 262 U.S. 159, 163 (1923).

B. Instead, to justify this Court's review, petitioners argue that this case presents "'an important question of federal law that has not been, but should be, settled by this Court.'" Commonwealth-Pet. 27 (quoting S. Ct. R. 10(c)). Petitioners claim that the First Circuit's decision has left Puerto Rico no "mechanism in place to provide for the orderly enforcement of its debts," creating a "real possibility that Puerto Rico's public utilities will be unable to continue providing vital services like electricity and public transportation." GDB-Pet. 27-28. Indeed, petitioners shriek that unless this Court acts to restore the Recovery Act, "the Commonwealth and its people [will be] left to the mercy of their creditors," Commonwealth-Pet. 29, and "[t]he result will be chaos." GDB-Pet. 27.

For at least five reasons, this alarmist plea should be rejected.

First, if there were any truth at all to petitioners' shrill predictions of economic cannibalism, petitioners would have sought emergency relief from the district court's injunction. But they did not—not in the court of appeals, and not in this Court. In fact, the district court's injunction has been in effect for more than eight months with none of petitioners' dire predictions coming to pass, and none on the horizon. That petitioners are unable to marshal any actual *facts* in support of their grim predictions about restructuring in the absence of the Recovery Act speaks volumes about the nature of those predictions.

Second, although petitioners emphasize the enormous weight of the Commonwealth's *own* debt

as reason to grant the petitions, the Commonwealth's debts are not subject to restructuring under either the Bankruptcy Code *or* the Recovery Act. *See* 11 U.S.C. § 109(c) (only "municipalit[ies]" are eligible for Chapter 9); Recovery Act §§ 102(50), 113 (Commonwealth-Pet. App. 176a-77a, 186a-87a) (Commonwealth ineligible to restructure debts under Recovery Act). A decision to weigh in on the Commonwealth's makeshift municipal-bankruptcy measures could not redress the significant fiscal problems facing the Commonwealth itself.

Third, even with the focus appropriately tightened to the debts of Puerto Rico's public corporations, petitioners' concern that the lower courts' decisions leave them without resort to bankruptcy remains only a policy complaint, irrelevant to the preemption question here. That is why the First Circuit did not "address in any detail the extent of the fiscal crisis facing the Commonwealth, PREPA, or other Commonwealth entities"; it recognized, "th[is] appeal presents a narrow legal issue." Commonwealth-Pet. App. 8a. That question is: When Congress changed the Bankruptcy Code's definition of "State" to eliminate the ability of Puerto Rico and the District of Columbia to place its municipalities into Chapter 9 bankruptcy in 1984, did it intend to retain Section 903(1)'s ban on state-law municipal bankruptcy regimes applicable to Puerto Rico and the District of Columbia since 1946, or did it instead amend Section 903(1) *sub silentio* to grant to Puerto Rico and the District of Columbia something no State has had since 1946—the power to enact its own municipal bankruptcy regime? That "narrow legal issue" by definition affects only the District of Columbia and

Puerto Rico and, as petitioners confess, is unlikely to recur. It accordingly cannot be cast as having the type of transcendent and nationwide importance that sometimes calls for this Court's review.

Fourth, whatever importance petitioners' question once had is rapidly diminishing. The first page of the Commonwealth's petition urges the Court to grant review because the Commonwealth's "three major public utilities" "need to restructure their debts." Commonwealth-Pet. 1. The GDB similarly says that Puerto Rico's "public utilities that provide essential services such as electricity cannot pay their debts as they come due." GDB-Pet. 2. But the very same week the Commonwealth filed its petition, as it attempted to float a new $750 million bond issuance for one of those three utilities (the water utility PRASA), Governor Garcia-Padilla's chief of staff said that "we currently do not contemplate PRASA necessitating a restructuring of its debt."[3]

---

[3] Nick Brown & Megan Davies, *Puerto Rico Says Water Authority Not at Risk; Investors Wary*, Reuters (Aug. 24, 2015), http://reut.rs/1JNtLOg. PRASA soon thereafter scrapped its bond issuance, reportedly because of its incongruity with the claims made in these petitions. *See* Mary Williams Walsh, *Puerto Rico Turmoil Sinks Sewer Bond*, N.Y. Times, Aug. 25, 2015, *available at* http://www.nytimes.com/2015/08/26/business/puerto-rico-turmoil-sinks-sewer-bond.html ("Investors . . . seemed taken aback by the island's move, on the one hand, to sell new bonds (and incur new debt) while also telling the Supreme Court that it had to restructure its old debt. . . . 'Either they're lying to investors about the bonds being payable, or lying to the Supreme Court about the bonds being unpayable.'").

And just days later, PREPA, respondents, and other creditors reached a voluntary debt-restructuring agreement on the *very debt* at the center of this case.[4] Although the agreement has not yet closed, the existence of an agreement-in-principle cuts off at the root petitioners' claim that the decision below left it powerless against PREPA's creditors' demands.

When petitioners claim to be in a "no man's land where [the Commonwealth's] public utilities cannot restructure their debts," Commonwealth-Pet. 1, what they really mean is that municipalities currently lack the power to bind bondholders to *nonconsensual* restructurings. But Puerto Rico's municipalities are hardly "unique" in that regard. Commonwealth-Pet. App. 104a. *All* municipalities must be "specifically authorized" to participate in Chapter 9, 11 U.S.C. § 109(c)(2), and only about half the States provide this authorization. Commonwealth-Pet. App. 104a & n.16. Commonwealth municipalities are not outliers, much less "the only entities in the history of the United States to be simultaneously ineligible for bankruptcy under *both* federal and state law," GDB-Pet. 3. And thus far, to the extent they need to restructure their debts at all, they seem perfectly ca-

---

[4] Chenery, *supra* n.2 (explaining that bondholders, including respondents, agreed to "receive 85% of the face value of their bonds in exchange for new securities that will be designed to carry investment-grade ratings").

pable of restructuring their debts without resort to bankruptcy.[5]

Finally, even if this Court granted review and ruled for petitioners on the merits, that could not itself revive the Recovery Act because that Act plainly violates the Contract Clause. *See Ry. Labor Execs.' Ass'n* v. *Gibbons*, 455 U.S. 457, 472 n.14 (1982) ("[T]he Contract Clause prohibits the States from enacting debtor relief laws which discharge the debtor from his obligations . . . ."). A ruling for petitioners on the preemption question presented here would require the district court to proceed to judgment on respondents' Contract Clause claims, and the writing is on the wall. As the district court explained in denying petitioners' motion to dismiss these claims, the Recovery Act "totally extinguishes significant and numerous obligations, rights, and remedies" previously guaranteed to bondholders. Commonwealth-Pet. App. 123a; *see* Commonwealth-Pet. App. 114a-27a. "[E]ven when acting to serve an important government purpose, the Commonwealth can impair contractual relationships only through reasonable and necessary measures," and the Recovery Act "im-

---

[5] Moreover, as petitioners acknowledge, they are urging the enactment of federal legislation to grant the Commonwealth's municipalities the access to Chapter 9 bankruptcy that the Bankruptcy Code currently denies them. *See* H.R. 870, 114th Cong. (2015); *see also* S. 1774, 114th Cong. (2015); Mary Williams Walsh, *Senate Panel Is Chilly to Puerto Rico's Pleas and Obama's Aid Plan*, N.Y. Times, Oct. 22, 2015, *available at* http://nyti.ms/1kxNqXs. If this or similar legislation were enacted, the Recovery Act would be preempted even on petitioners' extremely strained interpretations of Section 903(1).

poses a 'drastic impairment' when several other 'moderate courses' are available to address Puerto Rico's financial crisis." Commonwealth-Pet. App. 127a (alteration omitted) (quoting *U.S. Trust Co. of N.Y.* v. *New Jersey*, 431 U.S. 1, 31 (1977)). Respondents' Contract Clause claims thus stand as a substantial barrier to the relief that petitioners seek. And because petitioners' claim that their question presented is extraordinarily important hinges entirely on their assertedly desperate need for reinstatement of the Recovery Act, the fact that resolution of the question is unlikely to result in that relief is fatal to the claim that the question is important.

II. THE FIRST CIRCUIT CORRECTLY APPLIED SETTLED LAW IN HOLDING THAT THE BANKRUPTCY CODE PREEMPTS THE RECOVERY ACT.

The petitions transparently are requests for error correction, but there is no error in the decisions below. To the contrary, the text and history of the pertinent provisions of the Bankruptcy Code demonstrate that they are entirely correct.

A. Section 903(1) Preempts The Recovery Act.

1. Section 903(1) provides that "a State law prescribing a method of composition of indebtedness of [a] municipality may not bind any creditor that does not consent to such composition." 11 U.S.C. § 903(1). As the First Circuit correctly held, Commonwealth-Pet. App. 27a, the Recovery Act is invalid under that provision: The Recovery Act is, of course, a "law." Puerto Rico is a "State" for purposes of Section 903(1). *See* 11 U.S.C. § 101(52). And petitioners concede that the Recovery Act "creates a mechanism

for Puerto Rico's public corporations to restructure their debts" under which "all affected creditors are bound by the plan" after judicial confirmation—consenting or not. Commonwealth-Pet. 6-7. The plain text of Section 903(1) thus expressly bars the Recovery Act's debt-restructuring regime.

The history of Section 903(1) powerfully reinforces this plain-text reading. Congress enacted Section 903(1)'s precursor, Section 83(i) of the Bankruptcy Act, specifically to abrogate a decision of this Court holding that an early federal municipal-bankruptcy law did not preempt the States from designing their own municipal-restructuring regimes. *See Faitoute Iron & Steel Co.* v. *City of Asbury Park*, 316 U.S. 502, 508-09 (1942). Faced with the specter of every state passing its own version of Chapter 9, Congress determined that "[o]nly under a Federal law should a creditor be forced to accept such an adjustment without his consent." H.R. Rep. No. 79-2246, at 4 (1946). Section 83(i) thus provided that "no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition." Act of July 1, 1946, Pub. L. No. 79-481, sec. 1, § 83(i), 60 Stat. 409, 415.

From the time of its enactment in 1946, Section 83(i) applied to Puerto Rico because the Bankruptcy Act defined "States" to include U.S. "Territories and possessions." Act of June 22, 1938, Pub. L. No. 75-696, sec. 1, § 1(29), 52 Stat. 840, 842. In 1978, Congress re-codified Section 83(i) as Section 903(1), explaining that federal law would continue to prevent "States [from] enact[ing] their own versions of" Chapter 9 and thereby "frustrate the constitutional mandate of uniform bankruptcy laws." S. Rep. No.

95-989, at 110 (1978) (internal quotation marks omitted). The accompanying Senate Report underscored that only "stylistic changes" marked Section 83(i)'s re-codification as Section 903(1). *Ibid.* Section 903(1) has not changed since.

Petitioners' contention is that when Congress enacted the 1984 Bankruptcy Code amendments and made Puerto Rico and District of Columbia municipalities ineligible to participate in Chapter 9, it also, *sub silentio*, narrowed Section 903(1) to remove Puerto Rico and the District of Columbia from that statute's preemptive scope and to entrust those jurisdictions uniquely—unlike any of the States—with the power to enact their own municipal bankruptcy regimes.

The court of appeals rightly recognized that is an implausible reading of Congress's 1984 enactment. *See* Commonwealth-Pet. App. 27a ("The addition of the definition of 'State' in 1984 does not, by its text or its history, change the applicability of § 903(1) to Puerto Rico."); *see also Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998) ("We . . . 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.'" (citation omitted)).[6] Post-1984, Puerto Ri-

---

[6] The Commonwealth argues that because Congress departed from past bankruptcy practice when it disqualified Puerto Rico from authorizing municipalities to be Chapter 9 debtors, "there is no reason" for this Court "to suppose that Congress intended to preserve past bankruptcy practice by continuing to subject Puerto Rico to" Section 903(1)'s preemption provision. Commonwealth-Pet. 17. That is nonsense. There is ample reason to think that Section 903(1)'s scope remained unchanged: Congress *did not amend that provision*.

co is deemed a "State" throughout the Bankruptcy Code "except for the purpose of defining who may be a debtor under chapter 9 of this title." 11 U.S.C. § 101(52). This means that Puerto Rico's laws are "State laws," and a law like the Recovery Act that seeks to bind nonconsenting creditors of a municipality to a restructuring plan is preempted by Section 903(1).

2. Petitioners resist this straightforward statutory reading on two main grounds. As the First Circuit held, these arguments are "[c]reative [b]ut [u]nsound." Commonwealth-Pet. App. 31a.

a. First, petitioners claim that since Congress made Puerto Rico's municipalities "categorically ineligible for Chapter 9 relief" in 1984, Puerto Rico now falls entirely "outside the scope of" Chapter 9—including Section 903(1). Commonwealth-Pet. 15; *see also* GDB-Pet. 18. More specifically, they contend that Section 903's first sentence—which provides that Chapter 9 "does not limit or impair the power of a State to control" the political or governmental powers of a municipality, 11 U.S.C. § 903—does not apply to Puerto Rico, and that Section 903(1) does not apply to Puerto Rico either because it is "a proviso to Section 903['s]" first sentence. Commonwealth-Pet. 11; *see* GDB-Pet. 19.

This argument is flawed at each step and the legal proposition to which it leads—that States can invent their own municipal bankruptcy regimes if their municipalities cannot avail themselves of Chapter 9—cannot be reconciled with the text or history of Section 903(1). Petitioners' initial premise—that Section 903's first sentence "does not apply to Puerto Rico," Commonwealth-Pet. 12—is incorrect. That sentence makes clear that Chapter 9 does not limit a

State's power to control its municipalities. Puerto Rico undisputedly received the benefit of this statutory protection when it was first enacted because the then-applicable Bankruptcy Act defined "States" to include, *inter alia*, "the Territories." Bankruptcy Act of 1898, ch. 541, § 1(24), 30 Stat. 544, 545. And the re-codified version of that sentence in Section 903 still applies to Puerto Rico because Puerto Rico remains defined as a State. *See* 11 U.S.C. § 101(52).

Petitioners claim Section 903's first sentence lost "legal or logical application" to Puerto Rico when its municipalities were barred from invoking Chapter 9 in 1984. Commonwealth-Pet. 12. But as the First Circuit correctly observed, the text of Section 903 did not change in 1984. *See* Commonwealth-Pet. App. 26a. Now, as before, it ensures that all States (including Puerto Rico) retain control of their municipalities, whatever Chapter 9 might otherwise permit. That reservation of state power may not seem significant to Puerto Rico now, when its municipalities cannot avail themselves of Chapter 9, but that does not mean that Puerto Rico lacks the general power over its municipalities that Section 903 secures or that Section 903 otherwise does not "apply to" Puerto Rico. Section 903's reservation of sovereignty applies to Puerto Rico today as it did in 1937, when its predecessor was enacted. *See* Commonwealth-Pet. App. 47a (Torruella, J., concurring in the judgment) (agreeing with the majority that Section 903(1) "applies uniformly to Puerto Rico, together with the rest of Chapter 9").[7]

---

[7] For the same reasons, petitioners' argument that Section 903(1) does not apply to Puerto Rico because that provision is

Petitioners next contend that Section 903(1) "is nothing more than a proviso to Section 903," such that "if Section 903 does not apply to Puerto Rico, it follows that Section 903(1) does not apply to Puerto Rico either." Commonwealth-Pet. 13; *see* GDB-Pet. 19-20 (tying this argument to the term "municipality" in Section 903). Petitioners are incorrect.

Nothing turns on whether Section 903(1) is labeled a "proviso." A proviso may "'qualify and restrain'" the "'generality'" of the preceding clause and it may "'state a general, independent rule.'" *Republic of Iraq* v. *Beaty*, 556 U.S. 848, 858 (2009) (citations omitted). And on "any fair reading," *ibid.*, Section 903(1) is an independent rule of law. Section 903's first sentence reserves States' control over their municipalities by, for example, preventing a bankruptcy court from ordering a municipality to raise taxes. Section 903(1), by contrast, is an affirmative exercise of preemptive federal power that displaces States from the field of nonconsensual municipal bankruptcy.[8]

[Footnote continued from previous page]

"located within" Chapter 9 also lacks merit. Commonwealth-Pet. 9. The Bankruptcy Code nowhere provides, as petitioners assert, that "*all* of chapter 9" somehow becomes "inapplicable" "to persons or entities that do not satisfy the eligibility criteria for Chapter 9 relief" set forth in Section 109(c). GDB-Pet. 18.

[8] The Commonwealth (at 11) notes that the concurrence in *City of Pontiac Retired Emps. Ass'n* v. *Schimmel*, 751 F.3d 427 (6th Cir. 2014) (en banc) (per curiam), describes Section 903(1) as an "exception" to Section 903's first sentence. *Id.* at 433 (McKeague, J., concurring). But only two of the 15 judges on that en banc court joined that opinion. Moreover, the concurrence states only that Section 903(1) is an exception to "the general proposition that Chapter 9 does not limit or impair

The Commonwealth criticizes this statutory structure as "roundabout," Commonwealth-Pet. 15, but there is a very straightforward explanation for it. Congress enacted Section 903(1)'s precursor to overrule *Faitoute*, and *Faitoute* had relied on the precursor to Section 903's first sentence to support its holding that federal bankruptcy law did not preempt state municipal bankruptcy laws. *See* 316 U.S. at 508. By appending the new preemption provision to the same section of the Code that the *Faitoute* Court relied upon to find no preemption, Congress made pellucid its intent to abrogate *Faitoute*'s preemption holding.

The construction of Section 903(1) that petitioners urge—that Section 903(1) does not apply when a State's municipalities (like Puerto Rico's) are "categorically ineligible to invoke the Chapter 9 restructuring regime," Commonwealth-Pet. 14—is fundamentally at odds with Congress's intent to ensure that municipal bankruptcies be conducted "[o]nly under a Federal law." H.R. Rep. No. 79-2246, at 4; *see also* S. Rep. No. 95-989, at 110 (Congress recodified Section 83(i) as Section 903(1) to prevent "States [from] enact[ing] their own versions of" Chapter 9 and thereby "frustrate the constitutional mandate of uniform bankruptcy laws" (internal quotation marks omitted)). As noted above, under Section 109(c) of the Bankruptcy Code, to be eligible for Chapter 9 relief, a municipality must be authorized by its parent State to seek it. Currently, only rough-

---

[Footnote continued from previous page]

State power." *Ibid.* So formulated, that description does not deny that Section 903(1) has force independent of Section 903's first sentence.

ly half of the States provide that authorization to their municipalities. *See* Commonwealth-Pet. App. 104a & n.16. On petitioners' reading of Section 903(1), all of those States—and any others that might in the future choose to deny their municipalities authorization to seek Chapter 9 relief—are free to create their own state-law municipal-bankruptcy regimes. This would convert Section 903(1)'s categorical prohibition on state municipal-bankruptcy laws into an "opt-in" system under which state laws are preempted only to the extent that the State has authorized its municipalities to file for Chapter 9 bankruptcy. But it is precisely this specter of disuniformity that Congress intended to eliminate when it enacted Section 903(1)'s precursor in 1946.

Petitioners attempt to distance themselves from this untenable outcome by distinguishing between "jurisdiction[s], like Puerto Rico, that [are] *categorically* ineligible to invoke the Chapter 9 restructuring regime," and "the States, which always have the *option* of authorizing their municipalities to file under Chapter 9." Commonwealth-Pet. 14 (first emphasis added). But the text of the Bankruptcy Code suggests no basis for drawing that distinction. Regardless of whether a State *declines* to authorize its municipalities to access Chapter 9 or is *unable* to do so, the same provision of the Code—Section 109(c)—bars the State's municipalities from invoking Chapter 9. *See* 11 U.S.C. § 109(c)(2) (a municipality "may be a debtor under chapter 9" "if and only if" it is "specifically authorized . . . to be a debtor . . . by State law"). By arguing that Section 903(1)'s applicability turns on municipal eligibility to invoke Chapter 9, then, petitioners are bound to the "propositio[n]" that logically follows: that "states that do not authorize their municipalities to file for Chapter 9 relief are similar-

ly 'exempted'" from Section 903(1)'s preemptive scope, Commonwealth-Pet. App. 40a. Because petitioners' reading would revive the holding of *Faitoute* and disregard Congress's unambiguously expressed intent to make federal law the exclusive means of restructuring municipal debt, it must be rejected.

b. As a second counterargument to the plain-text reading of Section 903(1), the GDB raises several definitional arguments purportedly showing that Section 903(1) does not apply to Puerto Rico. The First Circuit properly rejected each of them. Tellingly, even the Commonwealth has abandoned these arguments after the First Circuit's decision. *See* Commonwealth-Pet. 11 (acknowledging that "Section 903(1), if applicable to Puerto Rico, would preempt the Recovery Act").

i. The GDB first argues that the Recovery Act does not bind any nonconsenting "creditors" as that term is used in Section 903(1). GDB-Pet. 20; *see* 11 U.S.C. § 903(1) ("a State law . . . may not bind any *creditor* that does not consent to such composition" (emphasis added)). Specifically, the GDB argues that Chapter 1 defines "creditor" as an "entity that has a claim against the debtor" and defines "debtor" as a person or municipality "concerning which a case under this title has been commenced." 11 U.S.C. §§ 101(10)(A), 101(13). Because Puerto Rico municipalities "can never be 'debtors'" under Chapter 9 "on account of § 101(52)," the GDB reasons that Puerto Rico municipalities have no "'creditors'" for purposes of Section 903(1). GDB-Pet. 20.

This argument has been rightly criticized as "mindless strict constructionism." Stephen J. Lubben, *Puerto Rico and the Bankruptcy Clause*, 88 Am. Bankr. L.J. 553, 576 (2014). Courts do not apply a

statutory definition "in a mechanical fashion" when doing so would "create obvious incongruities" and "destroy one of the major purposes" of the statute. *Lawson* v. *Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949); *see Philko Aviation, Inc.* v. *Shacket*, 462 U.S. 406, 412 (1983) ("A statutory definition should not be applied" to "defeat the purpose of the legislation."). Yet the GDB's construction of the statute would do just that.

As the court of appeals recognized, applying Section 101's definition of "creditor" as the GDB suggests would "undermine the stated purpose of [Section 903(1)] in prohibiting states from 'enacting their own versions of Chapter 9.'" Commonwealth-Pet. App. 33a (quoting S. Rep. No. 95-989, at 110) (alterations omitted). That is because this construction would allow "any state [to] avoid the prohibition" simply "by denying its municipalities authorization to file under § 109(c)(2)." Commonwealth-Pet. App. 33a-34a. This outcome would fly in the face of Congress's goal to ensure that debt adjustments are imposed on municipalities' nonconsenting creditors "[o]nly under a Federal law." H.R. Rep. No. 79-2246, at 4.

And the GDB's reading would make a hash of other provisions of the Bankruptcy Code, too. For example, if the statutory definition of "creditor" applied in Section 109(c)(5), no municipal-bankruptcy case could *ever* be commenced: That provision requires—as a precondition to filing for bankruptcy—that the indebted municipality either gain approval from its "creditors" to initiate a bankruptcy proceeding, negotiate with its "creditors," or show that negotiation with "creditors" was impracticable or that a "creditor" may attempt to take a voidable action. *See*

11 U.S.C. § 109(c)(5). Fulfilling that precondition would be impossible if the statutory definition of "creditor" were applied because "creditors" could exist only *after* a case has been commenced. Similar results would obtain for numerous other provisions of the Code, as the First Circuit's careful opinion highlights. *See* Commonwealth-Pet. App. 34a n.28 (explaining that the Code is "replete with use of the term 'creditor' in ways not limited by the statutory definition").

As the First Circuit explained, the GDB's argument "ignores congressional language choices, as well as context, and proves too much." Commonwealth-Pet. App. 32a. The court of appeals was correct to give the term "creditor" "its ordinary meaning," Commonwealth-Pet. App. 34a.

ii. The GDB also asserts that "none of [Puerto Rico's] municipalities is a 'municipality' as defined by the Bankruptcy Code, for purposes of § 903," because the term "municipality" is defined by reference to a "State," and Puerto Rico is not a State. GDB-Pet. 18 n.3. This argument fundamentally misapprehends Section 101(52), which decrees Puerto Rico to be a State throughout the Bankruptcy Code except for the purpose of "defining who may be a debtor under chapter 9." That exception precludes Puerto Rico from enacting the "State law" necessary to "authoriz[e] . . . a municipality . . . to be a debtor under" Chapter 9, 11 U.S.C. § 109(c)(2), but it has no effect outside Section 109(c). *See* GDB-Pet. 17 (acknowledging that Section 101(52)'s exception is "an indirect reference to § 109"). For the same reason, the GDB's assertion (at 21) that Puerto Rico is not a "State" for purposes of Section 903(1) is flawed: Sec-

tion 903(1) simply does not define or relate to "'who may be' a chapter 9 debtor." *Ibid.*

3. Petitioners argue that a presumption against preemption saves them from the preemptive force of the Bankruptcy Code. Commonwealth-Pet. 23-27; GDB-Pet. 12-16. The First Circuit correctly held that the presumption here is "weak, if present at all." Commonwealth-Pet. App. 36a. The presumption "is not triggered" where a State has legislated "in an area where there has been a history of significant federal presence." *United States* v. *Locke*, 529 U.S. 89, 108 (2000). Municipal bankruptcy is such an area: Congress has provided for the adjustment of municipal debts for nearly 80 years, and for the vast majority of that time—since 1946—has expressly barred States from enacting laws providing for nonconsensual restructuring of municipal debts. Moreover, the presumption against preemption protects States' "historic police powers," *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), and the coercive adjustment of municipal debts is not among those powers for the simple reason that the Contract Clause and federal supremacy in bankruptcy legislation have always imposed significant restraints on States' authority in those areas—even well before 1937. *See Ry. Labor Execs.' Ass'n*, 455 U.S. at 472 n.14; Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. Chi. L. Rev. 425, 427 (1993).

Petitioners respond that States passed bankruptcy statutes before the first permanent federal bankruptcy legislation was enacted in 1898. *See* Commonwealth-Pet. 23-24; GDB-Pet. 26. But petitioners do not dispute that the first state *municipal* bankruptcy legislation was not passed until the

1930s. *See* McConnell & Picker, *supra*, at 427. Indeed, in its 1938 decision upholding federal municipal-bankruptcy schemes, this Court agreed with the sentiment that "[t]here [wa]s no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts." *United States* v. *Bekins*, 304 U.S. 27, 51 (1938). And petitioners cannot dispute that the federal government has governed municipal bankruptcy *exclusively* since 1946. *See* Act of July 1, 1946, sec. 1, § 83(i), 60 Stat. at 415. There is simply no tradition of state regulation of municipal bankruptcy to which the presumption against preemption could attach. And even if there were, the clear language of Section 903(1) and the clear intent of Congress would overcome the presumption. *See supra* at 17-27; Commonwealth-Pet. App. 36a ("'[P]reemption is not a matter of semantics.'" (quoting *Wos* v. *E.M.A. ex rel. Johnson*, 133 S. Ct. 1391, 1398 (2013))).

B. The Recovery Act Is Also Preempted Because It Frustrates Congress's Objectives And Trespasses On A Field That Congress Has Occupied.

Finally, the decision below would be correct under preemption doctrines independent from the express preemption of Section 903(1).

A. A state law is preempted where it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby* v. *Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (internal quotation marks omitted). Both the First Circuit and the district court correctly held that the Recovery Act stands as such an obstacle to Chap-

ter 9, regardless of whether Section 903(1) also applies. Commonwealth-Pet. App. 42a, 108a-09a.

As the First Circuit explained, "all of the relevant authority shows that Congress quite plainly wanted a single federal law to be the sole source of authority if municipal bondholders were to have their rights altered without their consent." Commonwealth-Pet. App. 42a; *see also supra* at 17-20. But with the Recovery Act in force, Chapter 9 is no longer the only means of restructuring municipalities' debts; the Recovery Act thus stands as an affront to Congress's "long-professed intent to ensure that all municipalities seeking reorganization must do so under federal law." Commonwealth-Pet. App. 43a. The courts below accordingly were correct to hold that the Recovery Act must give way to Chapter 9. Commonwealth-Pet. App. 43a.

Petitioners claim that the Recovery Act and Chapter 9 exist in harmony because the Recovery Act applies only to Puerto Rico municipalities that are ineligible to be Chapter 9 debtors. For support, they note that liquidation proceedings for certain types of insurance companies and banks are regulated by state law, not the federal Bankruptcy Code. *See* Commonwealth-Pet. 1-2, 24-25; GDB-Pet. 14-15, 25. But that is not because of some lacuna in the federal bankruptcy laws. Quite the contrary, since 1910 Congress has *always* "directly and expressly exclude[d]" insurance companies and banks from federal bankruptcy law, thereby leaving each state free to regulate these entities. Commonwealth-Pet. App. 41a; *see* Act of June 25, 1910, Pub. L. No. 61-294, sec. 4, 36 Stat. 838, 839. In matters of municipal bankruptcy, however, Congress made the opposite choice: It expressly *precluded* state laws gov-

erning municipal bankruptcy to ensure that municipal restructurings take place only under a uniform federal law, and only *later* disqualified municipalities in Puerto Rico (and the District of Columbia) from eligibility to participate in that single, uniform, federal regime.

B. The doctrine of field preemption provides a further basis for holding the Recovery Act preempted. Preemption can "be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Arizona* v. *United States*, 132 S. Ct. 2492, 2501 (2012) (alterations in original) (quoting *Rice*, 331 U.S. at 230). Bankruptcy law "involves a federal interest 'so dominant' as to 'preclude enforcement of state laws on the same subject.'" *Sherwood Partners, Inc.* v. *Lycos, Inc.*, 394 F.3d 1198, 1201 (9th Cir. 2005) (citation omitted). The "detaile[d] and comprehensive provisions of the lengthy Bankruptcy Code . . . demonstrat[e] Congress's intent to create a whole system under federal control." *MSR Expl., Ltd.* v. *Meridian Oil, Inc.*, 74 F.3d 910, 914 (9th Cir. 1996).

This Court has thus long held that when federal bankruptcy law exists in a particular area, it occupies the entire field: "States may not pass or enforce laws to interfere with *or* complement the Bankruptcy Act or to provide additional or auxiliary regulations." *Int'l Shoe Co.* v. *Pinkus*, 278 U.S. 261, 265 (1929) (emphasis added). "The national purpose to establish uniformity necessarily excludes state regulation." *Ibid.*

The Recovery Act trespasses on Congress's comprehensive regulatory framework for the field of coercive municipal-debt restructuring. Chapter 9 establishes a comprehensive regulatory scheme for the "Adjustment of Debts of a Municipality." 11 U.S.C., ch. 9 (title). The Recovery Act is self-consciously "designed" "to mirror" many of these "key provisions," Recovery Act, Statement of Motives § E (Commonwealth-Pet. App. 155a), and thus indisputably enters an area where the "federal interest" is "dominant." *Arizona*, 132 S. Ct. at 2501 (internal quotation marks omitted). Inasmuch as the Act purports to enable municipalities to force creditors to accept debt restructurings in a manner similar to Chapter 9, it unquestionably provides "additional or auxiliary regulations" on bankruptcy matters. *Pinkus*, 278 U.S. at 265.

To be sure, in 1942 this Court held that the field of municipal bankruptcy had not *yet* been preempted by then-nascent federal municipal-bankruptcy law. *Faitoute*, 316 U.S. at 508-09. But in 1946, Congress made municipal bankruptcy a permanent feature of federal law and simultaneously enacted Section 83(i) to prohibit state laws from adjusting the debts of municipalities owed to nonconsenting creditors. Congress thereby established that the realm of binding compositions of municipal debt would henceforth be the exclusive domain of federal law. Petitioners have been unable to point to any post-1946 example of a State or territory attempting to re-enter that field, let alone with bankruptcy legislation as comprehensive and draconian as the 2014 Recovery Act. The unanimous First Circuit rightly affirmed the

district court in concluding that the Recovery Act cannot stand.[9]

---

[9] This Court recently granted certiorari in *Puerto Rico* v. *Sánchez Valle*, No. 15-108, which presents the question whether the Commonwealth and the federal government are separate sovereigns for purposes of the Double Jeopardy Clause of the U.S. Constitution. That does not support review here: As the Commonwealth itself recognized, the decision below did not address the question presented in *Sánchez Valle*, and the Double Jeopardy Clause is not at issue here. *See* Reply to Brief in Opposition 4, *Puerto Rico* v. *Sánchez Valle*, No. 15-108 (Sept. 8, 2015).

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

DAVID C. INDIANO
JEFFREY M. WILLIAMS
LETICIA CASALDUC-RABELL
INDIANO & WILLIAMS, PSC
207 Del Parquet St., 3d Floor
San Juan, P.R. 00912
(787) 641-4545

THEODORE B. OLSON
MATTHEW D. MCGILL
Counsel of Record
LINDSAY S. SEE
RUSSELL BALIKIAN
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500
mmcgill@gibsondunn.com

MATTHEW J. WILLIAMS
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, N.Y. 10166
(212) 351-2322

Counsel for Respondent BlueMountain Capital Management, LLC

October 23, 2015